



EXPEDITED SPCC SETTLEMENT AGREEMENT  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7, 901 N. 5<sup>th</sup> ST., KANSAS CITY, KANSAS 66101

04 MAY -6 PM 12:48

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**Respondent:** Southwest Fertilizer, Inc.  
(Owner/Operator)

**Location:** County Road 713, Trenton, NE 69044

On July 30, 2002, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection to determine compliance with the Oil Pollution Prevention (SPCC) regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act (33 U.S.C. § 1321(j)) (the Act), and found that Respondent had violated regulations implementing Section 311(j) of the Act by failing to comply with the regulations as noted on the attached Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form (Form), which is hereby incorporated by reference.

This proceeding and the Expedited Settlement are under the authority vested in the Administrator of EPA by Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), as amended by the Oil Pollution Act of 1990, and 40 CFR §§ 22.13(b) and 22.18(b), published at 64 Fed. Reg. 40137 on July 23, 1999. The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of **\$1950.00**. This settlement is subject to the following terms and conditions:

EPA finds that Respondent is subject to the SPCC regulations, which are published at 40 CFR Part 112, and has violated the regulations as further described in the Form. Respondent admits that he/she is subject to 40 CFR Part 112 and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Form. Respondent does not contest the Inspection Findings, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent has sent a certified check in the amount of \$1950.00 payable to the "Oil Spill Liability Trust Fund," to:

"Regional Hearing Clerk, Office of Regional Counsel, U.S. Environmental Protection Agency, 901 N. 5<sup>th</sup> Street, Kansas City, Kansas 66101". Respondent has noted on the penalty payment check "CWA-07-2003-0212" the docket number of this case.

(Do Not Make Check Out to the Regional Hearing Clerk)

**DOCKET NO:** CWA-07-2003-0212

This Expedited Settlement resolves Respondent's liability for Federal civil penalties for the violations of the SPCC regulations described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the SPCC regulations or of any other federal statute or regulations. By its first signature, EPA ratifies the Inspection Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective upon the Regional Judicial Officer's signature.

APPROVED BY EPA:

Stanley Walker Date: 4/29/04  
Chief, Emergency Planning & Response Branch,  
Superfund Division Albany, NY  
AIR, RLA, TOXIC

APPROVED BY RESPONDENT:

Name (print): BRAD A. WILLIAMS

Title (print): MGR - SOUTHWEST FERTILIZER INC

Signature: Brad A. Williams

IT IS SO ORDERED:

Robert L. Patrick Date May 6, 2004  
Robert L. Patrick  
Regional Judicial Officer

INSTRUCTIONS ON REVERSE

## INSTRUCTIONS

The United States Environmental Protection Agency ("EPA") has authority under Section 311 of the Clean Water Act to pursue civil penalties for violations of the Spill Prevention, Control and Countermeasures ("SPCC") regulations. However, EPA encourages the expedited settlement of easily verifiable violations of SPCC requirements, such as the violations cited in this Expedited Settlement Agreement.

You may resolve the cited violations quickly by signing and returning the Expedited Settlement Agreement (Agreement) and paying the penalty amount within 30 days of your receipt of the Agreement. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correcting the violations that have been specifically identified by the inspector. If you decide not to sign and return the Agreement and not pay the penalty, EPA can pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$11,000 per violation up to a maximum penalty of \$27,500.

If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

You are required in the Agreement to certify that you have corrected the violations and paid the penalty amount. The payment for the penalty amount must be in the form of a certified check payable to the "Oil Spill Liability Trust Fund," with the Docket Number of the Expedited Settlement Agreement on the check. The Docket Number is located at the top of the right column of the Agreement.

The Agreement and Payment of the penalty amount shall be sent via certified mail to:

Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101


By the terms of the Agreement, you waive your opportunity for a hearing pursuant to Section 311 of the Clean Water Act. EPA will treat any response to the proposed Agreement, other than acceptance of the settlement offer, as an indication that you are not interested in pursuing this expedited settlement procedure.

If you have any questions, you may contact the EPA Region 7 SPCC Compliance Coordinator at (913) 551-7251.

# **Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form**

(Note: Do not use this form if there is no secondary containment)

These Findings, Alleged Violations and Penalties are issued by EPA Region 7 under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Clean Water Act, as amended by the Oil Pollution Act of 1990

Respondent		Docket Number: CWA																	
Southwest Fertilizer, Inc.		<table border="1" style="display: inline-table; text-align: center;"> <tr> <td>7</td><td>-</td><td>2</td><td>0</td><td>0</td><td>3</td><td>-</td><td>0</td><td>2</td><td>1</td><td>2</td> </tr> </table>			7	-	2	0	0	3	-	0	2	1	2				
7	-	2	0		0	3	-	0	2	1	2								
Facility Name		Date																	
		7/30/02																	
Address		Inspection Number																	
County Road 713		<table border="1" style="display: inline-table; text-align: center;"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>																	
City:		Inspector's Name:																	
Trenton		Marc Callaghan																	
State:	Zip Code:	EPA Approving Official:																	
NE	69044	Bob Jackson																	
Facility Contact:		Enforcement Contacts:																	
Marvin Harms, President		<table border="1" style="display: inline-table; width: 100%;"> <tr> <td>Bob Webber</td> <td>Phone Number: (913)551-7251</td> </tr> <tr> <td>Alan Hancock</td> <td>Phone Number: (913)551-7647</td> </tr> </table>			Bob Webber	Phone Number: (913)551-7251	Alan Hancock	Phone Number: (913)551-7647											
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## **Summary of Findings**

**(Bulk Storage Facilities)**

**GENERAL TOPICS: 112.3(d), (e); 112.5(a), (b), (c); 112.7 (b), (c), (d)**

(When the SPCC Plan review penalty exceeds \$1,000.00 enter only the maximum allowable of \$1,000.00.)

- |  |            |
|--|------------|
| <input type="checkbox"/> No Spill Prevention Control and Countermeasure Plan .....   | \$1,000.00 |
| <input type="checkbox"/> Plan not certified by a professional engineer .....   | 300.00     |
| <input type="checkbox"/> No management approval of plan .....  | 300.00     |
| <input type="checkbox"/> Plan not available for review .....   | 300.00     |
| <input type="checkbox"/> Plan not maintained on site (applies if facility is manned at least eight (8) hours per day) .....  | 100.00     |
| <input checked="" type="checkbox"/> No evidence of three-year review of plan by owner/operator .....   | 50.00      |
| <input type="checkbox"/> No plan amendment(s) if the facility has had a change in: design, construction, operation,<br>or maintenance which affects the facility's discharge potential ..... | 50.00      |
| <input type="checkbox"/> Amendment(s) not certified by a professional engineer .....   | 100.00     |
| <input type="checkbox"/> Inadequate or no prediction of equipment failure which could result in discharges .....   | 100.00     |
| <input checked="" type="checkbox"/> Plan does not discuss appropriate containment/diversionary structures/equipment .....  | 100.00     |

Claiming installation of appropriate containment/diversionary structures is impractical but:

- ☐ No contingency plan ..... \$100.00
- ☐ No written commitment of manpower, equipment, and materials ..... 100.00

**Written Procedures and Inspection Records 112.7(e)(8)**

- ☐ Inspections required by 40 CFR Part 112 are not in accordance with written procedures developed for the facility ..... 50.00
- ☐ Written procedures and a record of inspections are not signed by facility supervisor ..... 50.00
- ☐ Written procedures and a record of inspections are not made part of the plan ..... 50.00
- ☒ Written procedures and a record of inspections are not maintained for three years ..... 50.00

**Personnel Training and Spill Prevention Procedures 112.7(e)(10)**

- ☐ No training on the operation and maintenance of equipment to prevent discharges ..... 50.00
- ☐ No training on the applicable laws, rules, and regulations ..... 50.00
- ☒ No designated person responsible for spill prevention ..... 50.00
- ☐ Spill prevention briefings are not scheduled and conducted periodically ..... 50.00
- ☐ Plan has inadequate or no discussion of personnel training and spill prevention procedures ..... 50.00

**FACILITY DRAINAGE, ONSHORE (excluding Production Facilities) 112.7(e)(1)**

- ☐ Valves used to drain diked areas are not of manual, open-and-closed design (note: flapper-type valves should not be used). ..... 200.00
- ☐ Pumps or ejectors not manually activated when diked storage areas drained ..... 100.00
- ☐ Drainage from undiked areas not into ponds, lagoons, or catchment basins, or no diversion systems to return spills to the facility. .... 300.00
- ☒ Plan has inadequate or no discussion of facility drainage ..... 50.00

**BULK STORAGE TANKS (excluding Production Facilities) 112.7(e)(2)**

- ☐ Material and construction of tanks not compatible to the material stored and the conditions of storage such as pressure and temperature ..... 300.00
- ☐ Secondary containment appears to be inadequate ..... 500.00
- ☒ Materials of construction are not sufficiently impervious ..... 250.00
- ☐ Excessive vegetation which affects the integrity of the containment system ..... 100.00
- ☒ Walls of containment system are slightly eroded or have low areas ..... 200.00

**When drainage from diked areas is to a storm drain, open water course, or lake or pond:**

- ☐ Bypass valve not normally sealed closed ..... 300.00
- ☐ Runoff rain water not inspected and/or will cause a harmful discharge as defined in 40 CFR 110 .... 300.00
- ☐ Bypass valve is not opened and resealed under responsible supervision ..... 100.00
- ☐ Adequate records of drainage events are not maintained ..... 50.00
- ☐ Underground tanks are not protected from corrosion or are not subjected to regular pressure testing. . 100.00
- ☐ Partially buried tanks do not have buried sections protected from corrosion. .... 100.00
- ☐ Aboveground tanks not subject to periodic integrity testing, such as visual, hydrostatic, and nondestructive methods, etc. .... 300.00
- ☐ Outside of tank not frequently observed for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked area. .... 300.00
- ☐ Steam return /exhaust of internal heating coils which discharge into an open water course not monitored, passed through a settling tank, skimmer, or other separation system. .... 100.00
- ☐ Records of inspections of aboveground tanks are not maintained ..... 50.00

**Tanks are not "fail-safe" engineered:**

- ☒ No audible or visual high liquid level alarm, or ..... 300.00
- ☐ No high-level pump cutoff devices set to stop flow at a predetermined tank content level, or ..... 300.00
- ☐ No direct communications between tank gauger and pumping station, or ..... 300.00
- ☐ No fast response system for determining liquid levels, such as computers, telepulse or direct vision gauges. .... 300.00
- ☐ No testing of liquid level sensing devices to ensure proper operation ..... 50.00
- ☐ Disposal facilities which discharge plant effluents directly to navigable waters are not monitored frequently to detect oil spills ..... 100.00
- ☐ Visible oil leaks resulting in accumulations of oil in diked areas are not promptly corrected ..... 300.00
- ☐ Mobile or portable storage tanks are not positioned to prevent spilled oil from reaching navigable water, or are in area subject to flooding. .... 100.00
- ☐ Secondary containment inadequate for mobile or portable storage tanks ..... 500.00
- ☐ Plan has inadequate or no discussion of bulk storage tanks ..... 50.00

**FACILITY TRANSFER OPERATIONS, PUMPING, AND IN-PLANT PROCESSES, ONSHORE**  
(excluding Production Facilities) 112.7(e)(3)

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- ☐ Buried piping not corrosion protected with protective wrapping, coating, or cathodic protection. .... 100.00
  - ☐ Corrective action not taken on buried piping when corrosion damage found ..... 300.00
  - ☐ Terminal connections at transfer points on not-in-service or standby pipelines are not capped or blank-flanged and marked as to origin ..... 50.00

- ☒ Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction. . . . . 50.00
- ☐ Aboveground valves and pipelines are not inspected regularly . . . . . 200.00
- ☐ Periodic pressure testing of the valves and pipelines is not conducted . . . . . 100.00
- ☐ Vehicle traffic not warned verbally or by appropriate signs of aboveground piping. . . . . 100.00
- ☒ Plan has inadequate or no discussion of facility transfer operations, pumping, and in-plant processes. . . 50.00

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**FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING RACK, ONSHORE 112.7(e)(4)**

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- ☒ Inadequate secondary containment, and/or rack drainage does not flow to catchment basin, treatment system, or quick drainage system. . . . . 500.00
- ☐ Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck. . . . . 300.00
- ☒ There is no interlocked warning light, physical barrier system, or warning signs to prevent vehicular departure before complete disconnect from transfer lines. . . . . 200.00
- ☐ There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck. . . . . 100.00
- ☐ Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack. . . . . 50.00

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**SECURITY (excluding Production Facilities) 112.7(e)(9)**

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- ☒ Facility not fully fenced and entrance gates are not locked and/or guarded when plant is unattended or not in production. . . . . 100.00
- ☐ Master flow and drain valves that permit direct outward flow of tank's contents to the surface are not secured in closed position when in a non-operating or standby status. . . . . 200.00
- ☐ Starter controls on pumps are not locked in the "off" position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status. . . . . 50.00
- ☐ Loading and unloading connection(s) of pipelines are not capped or blank-flanged when not in service. . 50.00
- ☐ Facility lighting not commensurate with the type and location of facility to facilitate the discovery of spills during hours of darkness and to deter vandalism. . . . . 100.00
- ☐ Plan has inadequate or no discussion of facility security . . . . . 50.00

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Other findings that must be corrected:

**TOTAL \$1950.00**

1. July 24, 2002, SPCC plan does not include scaled facility diagram, topographic maps, facility drainage retained by manual valves, rainwater drainage, fail-safe design features, and vehicle warning/barrier system.
2. Under rules published July 17, 2002, integrity testing of above ground containers must be combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing or another system of non-destructive shell testing. [Note: SPCC plan must be amended for this by August 17, 2004; and testing implemented by February 18, 2005]

IN THE MATTER OF Southwest Fertilizer, Inc., Respondent  
Docket No. CWA-07-2003-0212

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited SPCC Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristina Kemp  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Southwest Fertilizer, Inc.  
PO Box 245  
Trenton, Nebraska 69044

Copy by First Class Mail to:

US. Coast Guard  
Finance Center (OGR)  
1430A Kristina Way  
Chesapeake, VA 23326

Dated: 5/6/04



Kathy Robinson  
Regional Hearing Clerk